



STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Notice of Decision

Decision Date: March 15, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000013502

[REDACTED]

Dear [REDACTED],

On March 6, 2017 you appeared by telephone at a hearing on your appeal of NY State of Health's February 11, 2014, May 21, 2014, December 3, 2014, July 29, 2016, and November 24, 2016 eligibility determination notices.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of NY State of Health.

If you have questions about your Decision, you can contact us by:

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- Sending a Fax to 1-855-900-5557

When contacting NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification number and the NY State of Health Account ID at the top of this notice.

Legal Authority

We are sending you this notice in accordance with 45 Code of Federal Regulations (CFR) § 155.545.

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Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Was your appeal of NY State of Health's February 11, 2014, May 21, 2014, and December 3, 2014 eligibility determination notices timely?

Was your appeal of NY State of Health's July 29, 2016 eligibility determination notice timely?

Did NY State of Health's July 29, 2016 eligibility determination notice properly fail to address your eligibility for Medicaid?

Did NY State of Health properly determine that you were eligible for Medicaid for September 1, 2016 through October 31, 2016, and not prior to May 1, 2016?

Procedural History

On December 15, 2013 you created your NYSOH account and submitted an application for financial assistance with health insurance.

On February 11, 2014, NYSOH issued a notice of eligibility determination, based on the December 15, 2013 application, stating that three of your children were conditionally eligible for Medicaid, effective January 1, 2014. This notice requested that you submit absent parent documentation for your household by May 19, 2014.

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On February 12, 2014 you updated your application for financial assistance with health insurance. That day, a preliminary statement was issued stating that the information that you provided did not match what NYSOH had obtained from State and Federal data sources. NYSOH advised you that in order for your eligibility to be determined, you must submit documents to confirm that the information you provided in your application was accurate.

On February 27, 2014 you updated your application for financial assistance with health insurance. That day, NYSOH issued a preliminary eligibility determination, stating that three of your children were eligible for Medicaid, effective February 1, 2014.

On May 20, 2014 you updated your application for financial assistance with health insurance.

On May 21, 2014, NYSOH issued a notice of eligibility determination, based on the May 20, 2014 application, stating that your four children were eligible for Medicaid, effective May 1, 2014.

On December 2, 2014 you updated your application for financial assistance three times. That day, NYSOH issued preliminary eligibility determinations with regard to the first two applications, which found you and three of your children eligible for Medicaid, effective December 1, 2014.

On December 3, 2014, NYSOH issued a notice of eligibility determination with regard to your final application on December 2, 2014. That eligibility determination notice stating that your three children were eligible for Medicaid, effective December 1, 2014.

December 22, 2015 you updated your application for financial assistance with health insurance. That day, NYSOH issued a preliminary eligibility determination, stating that three of your children were eligible for Medicaid, effective December 1, 2015.

On July 28, 2016 you updated your application for financial assistance with health insurance.

On July 29, 2016, NYSOH issued a notice of eligibility determination based on the July 1, 2016 application, stating that three of your children were eligible for Medicaid, effective July 1, 2016.

On August 16, 2016 you updated your application for financial assistance with health insurance, and on August 25, 2016, NYSOH determined your household's eligibility for financial assistance.

On August 26, 2016, NYSOH issued a notice of eligibility determination, based on the August 16, 2016 application, stating that you were eligible for Medicaid, effective November 1, 2016, and that your three children remained eligible for Medicaid, effective August 1, 2016.

Also on August 26, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible for Medicaid for May 1, 2016 through July 31, 2016. On November 2, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible for Medicaid for August 1, 2016 through August 31, 2016.

On November 23, 2016 you updated your application for financial assistance. That day, NYSOH issued a preliminary eligibility determination stating that you were eligible for Medicaid from September 1, 2016 through October 31, 2016.

Also on November 23, 2016, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination notice insofar as you were not found eligible for Medicaid as of January 1, 2014.

On March 6, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing closed at the end of the hearing.

Findings of Fact

A review of the record supports the following findings of fact:

- 1) You testified that you expect to file your 2016 federal income tax return as head of household, and claim your three children as dependents.
- 2) You testified that your annual expected income is \$14,400.00, which consists solely of your Social Security Disability Benefits. Your most recent application, November 23, 2016, indicates that your monthly income is \$1,200.00.
- 3) You testified that your two youngest children receive \$230.00 per month each in Social Security benefits.
- 4) You testified that you have been applying for Medicaid through NYSOH for years.
- 5) You testified that you have had Medicare since 2003 and pay the premiums for Medicare Part D.
- 6) You were found eligible for Medicaid as of May 1, 2016. You testified that you are seeking Medicaid coverage as far back as possible.

- 7) Your NYSOH account indicates that you receive your notices from NYSOH via regular mail.
- 8) There is no evidence that any mail issued to you by NYSOH has been returned.
- 9) In the applications dated December 15, 2013, February 27, 2014, May 20, 2014, and December 22, 2015, you indicated that you were not seeking health insurance coverage.
- 10) On December 2, 2014 you submitted three applications for health insurance. In the first two applications you indicated that you were seeking health insurance coverage. Preliminary eligibility determinations issued that day indicated that you were eligible for Medicaid. However, in your final application submitted on December 2, 2014 you indicated that you were not seeking health insurance coverage.
- 11) You testified that you met with an application counselor in July 2016 and they tried to assist you in getting coverage.
- 12) The record reflects that on July 28, 2016 a certified application counselor updated your application for financial assistance with health insurance and indicated that you were not seeking coverage.
- 13) The record reflects that on August 16, 2016 the certified application counselor updated your application for financial assistance to indicate that you were seeking coverage through NYSOH.
- 14) The record reflects that on May 27, 2014 you contacted NYSOH and complaint [REDACTED] was filed. The note from that complaint indicates that you were disputing the start date for one of your children's Medicaid coverage. There is no indication in that complaint that you were seeking Medicaid for yourself.
- 15) The record reflects that on December 2, 2014 you contacted NYSOH and complaint [REDACTED] was filed. The note from that complaint indicates that you were filing that complaint because you were unable to choose a Medicaid Managed Care plan for your three children. There is no indication in that complaint that you were seeking Medicaid for yourself.
- 16) The record reflects that on May 11, 2016 you contacted NYSOH and filed a complaint, which was assigned complaint [REDACTED], as you needed a Medicaid benefit cards for your children. There is no

indication in that complaint that you were seeking Medicaid for yourself.

- 17) The record reflects that on September 9, 2016 you contacted NYSOH and filed a complaint, which was assigned complaint [REDACTED]. This complaint indicates that you had been granted a November 1, 2016 start date for your Medicaid, and you were seeking an earlier Medicaid start date.
- 18) On November 23, 2016 you spoke with NYSOH's Account Review Unit and filed a formal appeal with regard to the start date of your Medicaid. This complaint was not closed until March 6, 2017.
- 19) The February 11, 2014, May 21, 2014, and December 3, 2014 eligibility determination notices contain information regarding your appeal rights as well as how to file an appeal.
- 20) You testified that you did not file an appeal of earlier, because you did not know that this was available to you.

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

Applicable Law and Regulations

Valid Appeal Requests

An applicant has the right to appeal to NYSOH's Appeals Unit: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (3) an eligibility determination for an exemption; (4) a failure by the Exchange to provide timely notice of an eligibility determination 45 CFR § 155.505; and (5) a denial of a request for a special enrollment period (45 CFR § 155.505(b)(1)(iii), 45 CFR § 155.305(b), and 45 CFR § 155.420(d)).

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by NYSOH (45 CFR §155.520(b)(2); 18 NYCRR 358-3.5(b)(1)).

Medicaid for Adults between the Ages of 19 and 65

Medicaid through NYSOH can be provided to adults who: (1) are age 19 or older and under age 65, (2) are not pregnant, (3) are not entitled to or enrolled for

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Medicare benefits under part A or B of title XVIII of the Act, (4) are not otherwise eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part, and (5) have a household modified adjusted gross income (MAGI) that is at or below 138% of the federal poverty level (FPL) for the applicable family size (42 CFR §§ 435.119(b), 435.911(b)(1), 435.603(d)(4); N.Y. Soc. Serv. Law § 366(1)(b)).

In an analysis of Medicaid eligibility, the determination is based on the FPL “for the applicable budget period used to determine an individual's eligibility” (42 CFR § 435.4). On the date of your application, that was the 2016 FPL, which is \$24,300.00 for a four-person household (81 Fed. Reg. 4036).

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size (42 CFR § 435.603(h)(1); State Plan Amendment (SPA) 13-0055-MM3, as approved March 19, 2014).

An individual is eligible for fee-for-service Medicaid effective on the first day of the month if an individual was eligible any time during that month (42 CFR § 435.915(b), Medicaid Eligibility Changes under the Affordable Care Act (ACA) of 2010, 13ADM-03(III)(F)).

The Department of Health must make Medicaid coverage start retroactively for up to three months prior to the month of application if the individual received medical services that would have been covered under Medicaid and the individual would have been eligible for Medicaid at the time he received the services if he had applied (42 CFR § 435.915(a)). The Department of Health may make eligibility effective for fee-for-service Medicaid on the first day of the month if an individual was eligible any time during that month (42 CFR § 435.915(b)).

Legal Analysis

The first issue under review is whether your appeal of NYSOH's February 11, 2014, May 21, 2014, and December 3, 2014 eligibility determination notices was timely.

On February 11, 2014, May 21, 2014, and December 3, 2014 NYSOH issued notices of eligibility determination stating that your children were eligible for Medicaid. These notices did not address your eligibility for Medicaid, as you had indicated that you were not seeking Medicaid at the time of those applications.

The record reflects that the first time you contacted NYSOH to file a complaint in regard to the start date of your Medicaid was September 9, 2016.

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by NYSOH.

For an appeal to have been valid on the issue of NYSOH not determining you eligible for Medicaid at the time of the February 11, 2014 eligibility determination notice, an appeal should have been filed by April 12, 2014. For an appeal to have been valid on the issue of NYSOH not determining you eligible for Medicaid at the time of the May 21, 2014 eligibility determination notice, an appeal should have been filed by July 20, 2014. For an appeal to have been valid on the issue of NYSOH not determining you eligible for Medicaid at the time of the December 3, 2014 eligibility determination notice, an appeal should have been filed by February 1, 2015. According to the credible evidence in the record, you did not contact NYSOH to file a complaint until September 9, 2016, well after the 60-day time period to file a formal appeal.

You testified that you were not offered the option of an appeal until recently. However, the record reflects that NYSOH sent you notices on February 11, 2014, May 21, 2014, and December 3, 2014. Neither of these notices was returned to NYSOH as undeliverable. Both of these notices advised you of your appeal rights, including the requirement that an appeal be filed within 60 days of a determination. However, no attempt was made to file an appeal of these determinations until September 9, 2016.

Therefore, there has been no timely appeal of the February 11, 2014, May 21, 2014, and December 3, 2014 eligibility determination notices and your appeal on the issue of NYSOH not determining you eligible for Medicaid at the time of the February 11, 2014, May 21, 2014, and December 3, 2014 eligibility determination notices is DISMISSED.

The second issue under review is whether your appeal of NYSOH's July 29, 2016 eligibility determination notice was timely.

On July 29, 2016 NYSOH issued a notice of eligibility determination stating that your children were eligible for Medicaid. This notice did not address your eligibility for Medicaid, as you had indicated that you were not seeking Medicaid at the time of that applications.

The record reflects that the first time you contacted NYSOH to file a complaint in regard to the start date of your Medicaid was September 9, 2016.

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by NYSOH.

For an appeal to have been valid on the issue of NYSOH not determining you eligible for Medicaid at the time of the July 29, 2016 eligibility determination notice, an appeal should have been filed by September 27, 2016. According to

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the credible evidence in the record, you contacted NYSOH to file a complaint on September 9, 2016, which was within the 60-day time period to file a formal appeal. This complaint was the subject of an informal review process and was not formally closed until March 6, 2017. A formal appeal on the issue of the start date of your Medicaid was filed on November 23, 2016.

As you were involved in the informal review process as of September 9, 2016 on the issue of the start date of your Medicaid, which was within the 60-day time period to file a formal appeal, your appeal of the July 29, 2016 eligibility determination was timely and will be reviewed.

The third issue is whether NYSOH properly failed to address your eligibility for Medicaid in the July 29, 2016 eligibility determination notice.

On July 28, 2016 your application was updated by a certified application counselor and submitted to NYSOH. In that application, you are indicated as not applying for health insurance coverage through NYSOH.

As you were indicated as not applying for health insurance coverage, NYSOH did not determine your eligibility for financial assistance with health insurance.

Therefore, the July 29, 2016 notice of eligibility determination is AFFIRMED.

The fourth issue under review is whether NYSOH properly determined that you were eligible for Medicaid for September 1, 2016 through October 31, 2016, and not eligible for Medicaid prior to May 1, 2016.

You were initially found eligible for Medicaid in the August 26, 2016 eligibility determination notice. According to this notice, your coverage with Medicaid began November 1, 2016.

You were also found eligible for retroactive Medicaid for May 1, 2016 through July 31, 2016, August 1, 2016 through August 31, 2016, and September 1, 2016 through October 31, 2016.

You testified that you are seeking to have your Medicaid coverage retroactively applied for as far back as possible.

Medicaid coverage can be made effective retroactively for up to three months prior to an individual's application if the individual received medical services that would have been covered under Medicaid and if they would have been eligible for Medicaid in those three months had they applied.

The record reflects that an application for health insurance was submitted for your household on July 28, 2016, however, in that application, it was indicated

that you were not seeking health insurance coverage through NYSOH for yourself.

The record reflects that your application was updated to indicate that you were applying for health insurance coverage through NYSOH on August 16, 2016. Therefore, you were eligible to apply for retroactive Medicaid coverage for the three months prior to your August 16, 2016 application, those months being May 2016, June 2016, and July 2016.

Since you were granted Medicaid for the three months prior to your application for health insurance through NYSOH, NYSOH properly determined that you were eligible for Medicaid for May 1, 2016 through July 31, 2016, August 1, 2016 through August 31, 2016, and September 1, 2016 through October 31, 2016 and not prior to May 1, 2016. Therefore, the November 24, 2016 eligibility determination stating that you were eligible for Medicaid for September 1, 2016 through October 31, 2016, and not prior to May 1, 2016, is correct and is AFFIRMED.

Decision

The appeal of the February 11, 2014, May 21, 2014, and December 3, 2014 eligibility determination notices is DISMISSED as untimely.

The July 29, 2016 eligibility determination notice is AFFIRMED.

The November 24, 2016 eligibility determination notice is AFFIRMED.

Effective Date of this Decision: March 15, 2017

How this Decision Affects Your Eligibility

You are not eligible for Medicaid prior to May 1, 2016.

Your eligibility for Medicaid was effective as of May 1, 2016.

If You Disagree with this Decision (Appeal Rights)

This Decision is final unless you submit an appeal request to U.S. Department of Health and Human Services or bring a lawsuit under New York Civil Practice Law and Rules, Article 78.

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You may bring a lawsuit on any Appeals Unit decision in New York State court in accordance with Article 78 of the New York Civil Practice Law and Rules. This must be done within four months of the Decision Date, which appears on the first page of this Decision.

Additionally, Appeals Unit decisions on issues involving eligibility for qualified health plans, advance premium tax credits, and cost-sharing reductions may be appealed to the U.S. Department of Health and Human Services. This must be done within 30 days of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

If you wish to be represented by an attorney in bringing an outside appeal and do not know how to go about getting one, you may contact legal resources available to you. You may, for example, contact the local County Bar Association, Legal Aid, or Legal Services.

If You Have Questions about this Decision (Customer Service Resources):

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- By calling the Customer Service Center at 1-855-355-5777
- By mail at:
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- By fax: 1-855-900-5557

Summary

The appeal of the February 11, 2014, May 21, 2014, and December 3, 2014 eligibility determination notices is DISMISSED as untimely.

The July 29, 2016 eligibility determination notice is AFFIRMED.

The November 24, 2016 eligibility determination notice is AFFIRMED.

You are not eligible for Medicaid prior to May 1, 2016.

Your eligibility for Medicaid was effective as of May 1, 2016.

Legal Authority

We are issuing this determination in accordance with 45 CFR § 155.545.

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A Copy of this Decision Has Been Provided To:

